



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/170221

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on December 15, 2015. The record was held open for a period of 10 days to allow for respondent to submit further information.

The issue for determination is whether the respondent correctly discontinued the petitioner's Medicaid Waiver eligibility due to assets exceeding program limits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Iowa County.
2. The petitioner was an ongoing recipient of Medical Assistance (MA) benefits. He was due for a renewal by May 31, 2015. Petitioner's benefits ended June 1, 2015, due to assets exceeding program limits.
3. The petitioner's assets over the \$2,000 limit included a VA life insurance policy that had a cash surrender value of \$2,165.98 in May of 2015.
4. Respondent notified petitioner that a new application for benefits would be required in July, 2015, and a new interview as done on July 20, 2015. On August 17, 2015, petitioner's application was denied. The respondent received a request for assistance on September 8, 2015, petitioner's case was reactivated September 15, 2015, and petitioner's case was open effective September 1, 2015 with no cost share.

DISCUSSION

The face value of a life insurance policy is considered to be its benefit payable upon death. See *Medicaid Eligibility Handbook*, § 4.5.7.5. The cash surrender value is the net amount of cash for which the policy could be surrendered, after deducting any loans or liens against it. See *Medicaid Eligibility Handbook*, § 4.5.7.5. With certain exceptions not applicable here, the cash surrender value of a life insurance policy is considered available to its owner. The cash value is counted as an asset when the total face value of all policies exceeds \$1,500.

An individual is financially eligible for MA if the total value of all non-exempt liquid assets do not exceed \$2,000. Wis. Stats. § 49.47(4)(b). In determining the eligibility of an institutionalized individual, only the assets actually available that person shall be considered. Wis. Admin. Code § DHS 103.06. The *Medicaid Eligibility Handbook*, § 4.5.2, defines availability as follows:

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance.

Consider an asset as unavailable if:

1. The client lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

Or

When the owner or owner's representative documents that the asset will not be available for 30 days or more.

The key to whether an asset is available is if the applicant or recipient could dispose of the insurance by demanding its liquidation; had legal title to the cash value; and could actually make it available for his or her support and maintenance within 30 days of *requesting* liquidation.

The clear, unambiguous language of both Wis. Stat. § 49.47(4)(b), and Wis. Admin. Code § DHS 103.08(1), states that eligibility cannot exist prior to the date on which all eligibility requirements are met. Until September 1, 2015, petitioner's verified non-exempt assets exceeded \$2,000. Until that time, petitioner was ineligible for MA. Final Department Decision MED-66/83873, dated October 25, 1994, also confirms that MA will not be backdated to a date earlier than the date on which assets were reduced below the legal limit. The Division of Hearings & Appeals has consistently taken the position that it will not order eligibility retroactive to a date when the assets were above the limit.

Petitioner's representatives testified that they were unfamiliar with the MA rules, and that the respondent failed to provide any information on how to reduce the value of petitioner's assets. There was also some apparent confusion with the transfer of petitioner's case to the Southern Consortium and Care Wisconsin. The petitioner pointed out that even as late as August, 2015, the cash surrender value of petitioner's life insurance policy exceeded \$2,000.00.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, his assets exceeded \$2,000.00 prior to September, 2015, he was not eligible as a result, and no exception applies. I am without any equitable powers to direct any remedy beyond the remedies available under law.

In a post-hearing submission received from the respondent, he writes:

Should the client verify that the [cash surrender value] as of 7/31/15 and 8/30/15 was at or below the \$2,000.00 asset limit, and if the MCO was continuously serving the client, eligibility could be approved for the months of July and August 2015.

If petitioner is able to demonstrate a lower cash surrender value, he should immediately report that to the respondent. Based on the record before me, however, petitioner has not established that he had assets below \$2,000 prior to September of 2015. As such, I find that the respondent acted correctly in this matter.

CONCLUSIONS OF LAW

1. That petitioner was not eligible for MA during the months of July and August, 2015, as his non-exempt assets exceeded the \$2,000 MA asset limit.
2. That administrative law judges do not have the authority to bypass clearly stated law and policy.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of February, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 25, 2016.

La Crosse County Department of Human Services
Office of Family Care Expansion
Health Care Access and Accountability